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SUBJECT: UZBEKISTAN GSP PETITIONS: REQUEST FOR INTERIM DEMARCHE

REF: A) 07 STATE 56790 B) 07 TASHKENT 2011

SENSITIVE BUT UNCLASSIFIED; PLEASE PROTECT ACCORDINGLY.

¶1. (U) This is an action request; please see para 9.

¶2. (SBU) SUMMARY AND ACTION REQUEST: The USG is presently continuing to review two petitions against Uzbekistan under the Generalized System of Preferences (GSP) program. The first petition, dating to 1999, alleges Uzbekistan's failure to protect intellectual property rights adequately. The second, a 2007 petition from the International Labor Rights Forum (ILRF), alleges Uzbekistan's failure to protect internationally recognized worker rights, in particular in child labor in the cotton industry. In April 2007, the USG extended review of the IPR petition for another year, and included GSP-related instructions to Post in the 2007 Special 301 demarche (ref A) requesting the GOU take the step of removing its reservation to the Berne Convention as an interim step. Uzbekistan has made clear, subsequently, that it does not intend to lift this reservation. As part of the USG's ongoing review of both GSP petitions, Post is requested to meet with appropriate GOU officials to call attention to the need for GOU steps to resolve the issues related to GSP eligibility alleged in the two petitions, and to underscore the continued USG review of the petitions. END SUMMARY AND ACTION REQUEST.

BACKGROUND

¶3. (U) The GSP program is designed to promote economic growth in the developing world, and provides preferential duty-free entry for more than 4,650 products from 143 designated beneficiary countries and territories. The GSP program was instituted on January 1, 1976, after being authorized under the Trade Act of 1974 for a 10-year period. It has been renewed periodically since then, most recently in 2006, when President Bush signed legislation that reauthorized the GSP program through the end of 2008. In 2006 Uzbekistan exported USD 2.8 million in products to the U.S. under GSP, or 1.8 percent of the USD 151 million in total exports to the U.S. Uzbekistan's exports under GSP in 2007 are up 60 percent year-on-year, but admittedly starting from a small base.

¶4. (U) The interagency GSP subcommittee of the Trade Policy Staff Committee (TPSC) reviews all accepted GSP petitions and submits its recommendations to the TPSC policy-level officials for decision. The GSP subcommittee is chaired by USTR and is comprised of representatives from State, Treasury, Commerce, Labor, Agriculture and the U.S. International Trade Commission (non-voting). At the conclusion of a petition's review, the subcommittee may recommend that the review be closed and a country's benefits be terminated, limited or suspended, or remain unchanged. One of the aims of the petition review process is to encourage action by the host government to address the issues

identified in the petition with respect to the GSP eligibility criteria. In this regard, therefore, the review process is not intended to move directly to punitive action, such as suspension of GSP benefits. Rather, the GSP subcommittee makes every effort through engagement, such as demarche requests, to resolve issues in a positive way. However, host governments should understand that under the GSP statute, failure to address issues of concern can lead to a loss of GSP benefits.

2007 Worker Rights Petition

15. (U) In June 2007, the International Labor Rights Fund (ILRF) petitioned the USG for suspension of Uzbekistan's benefits under GSP, alleging Uzbekistan failed to take steps to accord workers internationally recognized labor rights as required by the eligibility criteria for GSP benefits. The petitioner alleged more specifically that the GOU had failed to protect workers from compulsory labor. The ILRF also criticized Uzbekistan for failing to eliminate the worst forms of child labor. Under the GSP mandatory statutory eligibility criteria, the President shall not designate a country as a GSP beneficiary if the country: 1) "(H)as not taken or is not taking steps to afford internationally recognized worker rights to workers in the country...." OR 2) "(H)as not implemented its commitments to eliminate the worst forms of child labor."

1999 IPR Petition

16. (U) In 1999, the International Intellectual Property Alliance (IIPA) petitioned the USG to suspend Uzbekistan's GSP benefits due to Uzbekistan's failure to comply with the intellectual property rights eligibility requirements under GSP. The statute requires countries to provide "adequate and effective" IPR protection. IIPA has repeatedly highlighted serious deficiencies in Uzbekistan's IPR protection regime.

17. (SBU) Since 1999, the GSP subcommittee has reviewed Uzbekistan's record on IPR protection with respect to the allegations in the IIPA submissions. Each year, the GSP subcommittee has recommended the petition be extended for an additional year of review. In April 2006, the United States provided Uzbekistan with a detailed action plan to help Uzbekistan improve its IP regime, with the aim of implementing requirements under the U.S.-Uzbekistan Trade Agreement and standards contained in the WTO TRIPS Agreement.

The USG would still like to see the GOU take steps to reach the goals indicated in this action plan.

18. (SBU) In April 2007, the GSP subcommittee extended the review of Uzbekistan's IPR petition for an additional year. The announcement of this decision was included in the 2007 Special 301 demarche. The GSP subcommittee recognized that Uzbekistan passed amendments to its Copyright law in June 2006. However, these amendments did not address concerns about the issue of Article 18 of the Berne Convention and protection for pre-existing works. Thus, in the Special 301 demarche, the USG put particular focus on Uzbekistan withdrawing its reservation to Article 18 of the Berne Convention, and provide copyright protection for certain pre-existing works. Unfortunately, Uzbekistan has made clear, subsequently, that it does not intend to lift this reservation.

Action Request

19. (SBU) The GSP subcommittee review of the ILRF petition is continuing in Washington, and the subcommittee will provide recommendations by June 30 on next steps. Review of the long-pending IPR petition will proceed on a similar timeframe. The GSP subcommittee would welcome steps from the GOU toward resolving the issues identified in both petitions. Post is requested to meet with appropriate GOU officials to call attention to the need for GOU steps to resolve the

issues related to GSP eligibility alleged in the two petitions, and to underscore the continued USG review of the petition. It is suggested that Post draw upon the following suggested steps that the GOU could take to move toward resolution of the issues identified in the ILRF and IIPA petitions:

Worker Rights Petition

-- Enforce the 2001 Government decree that prohibits anyone under the age of 18 from engaging in manual labor in hazardous occupations, including cotton harvesting, and all relevant laws prohibiting forced and compulsory labor, including by children;

-- Take steps to ratify and come into compliance with ILO Convention 182 on the Elimination of the Worst Forms of Child Labor.

-- Absent ratification of ILO 182, the GOU should still complete and promulgate a list of hazardous occupations for children. In compliance with the objectives of Convention 182, child labor in the cotton harvesting industry should be included on this list.

-- The GOU could take steps to design and implement an action program to eliminate the worst forms of child labor and instances of forced or compulsory labor, drawing on assistance and advice from expert international organizations such as the ILO.

IPR Petition

-- In April 2006, the United States provided Uzbekistan with a detailed action plan to help Uzbekistan improve its IP regime, with the aim of implementing requirements under the U.S.-Uzbekistan Trade Agreement and standards contained in the WTO TRIPS Agreement.

-- The USG requests that the GOU take steps to reach the goals indicated in this action plan. Embassy Tashkent is encouraged to obtain an update from the GOU to relay to Washington agencies on steps taken by the GOU on the action plan.

-- Of high priority is that Uzbekistan withdraw its reservation to Article 18 of the Berne Convention, and take action to provide effective copyright protection for certain pre-existing works.

-- (For Post's background and use on an as-needed basis) We understand the GOU has raised concerns in the past with the USG's own record on Berne Convention implementation. The United States acceded to the Berne Convention in 1988. While the Berne Convention Implementation Act of 1988 went into effect March 1, 1989, it did not contain provisions related to restoration of copyright in foreign works. Some arguments were made at the time that U.S. law already complied with Berne Article 18. In any event, U.S. copyright law clearly restored copyright to Berne-country works when the U.S. passed legislation implementing the WTO TRIPS Agreement in 1994. If the USG record is raised, Post should stress that the United States is in full compliance with Berne Article 18 by virtue of 17 USC 104A. The USG again offers our assistance in drafting a similar provision for Uzbekistan's copyright law.

-- (For Post's background and use on an as-needed basis) We understand that the GOU has raised objections to what it terms "retroactive fines" under Berne Article 18. Berne Article 18 does not require countries to impose liability on persons who performed acts that were legal prior to Berne accession, but which would be copyright infringement after Berne accession. For example, if a person had reproduced a foreign literary work prior to accession, that person would not become, by virtue of accession, retroactively liable for

that act. However, if that same person were to reproduce that same foreign literary work after accession, his action would be copyright infringement, and should cause him to incur liability, although Berne Article 18(3) does allow some flexibility with respect to so-called reliance parties. Therefore, if the Government of Uzbekistan is using the term "fines" to refer to civil or criminal liability, fines would not be required for pre-accession acts, but would be required for post-accession infringing acts.

RICE